



House of Representatives

File No. 617

General Assembly

February Session, 2012

(Reprint of File No. 299)

Substitute House Bill No. 5501
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 2, 2012

AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-1p of the 2012 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2012*):

4 (a) For the purposes of this section:

5 (1) "Eyewitness" means a person who observes another person at or
6 near the scene of an offense;

7 (2) "Photo lineup" means a procedure in which an array of
8 photographs, including a photograph of the person suspected as the
9 perpetrator of an offense and additional photographs of other persons
10 not suspected of the offense, is [displayed] presented to an eyewitness
11 for the purpose of determining whether the eyewitness is able to
12 identify the suspect as the perpetrator;

13 (3) "Live lineup" means a procedure in which a group of persons,
14 including the person suspected as the perpetrator of an offense and

15 other persons not suspected of the offense, is [displayed] presented to
16 an eyewitness for the purpose of determining whether the eyewitness
17 is able to identify the suspect as the perpetrator;

18 (4) "Identification procedure" means either a photo lineup or a live
19 lineup; and

20 (5) "Filler" means either a person or a photograph of a person who is
21 not suspected of an offense and is included in an identification
22 procedure.

23 (b) Not later than February 1, 2013, the Police Officer Standards and
24 Training Council and the Division of State Police within the
25 Department of Emergency Services and Public Protection shall jointly
26 develop and promulgate uniform mandatory policies and appropriate
27 guidelines for the conducting of eyewitness identification procedures
28 that shall be based on best practices and be followed by all municipal
29 and state law enforcement agencies. Said council and division shall
30 also develop and promulgate a standardized form to be used by
31 municipal and state law enforcement agencies when conducting an
32 identification procedure and making a written record thereof.

33 [(b)] (c) Not later than [January 1, 2012] May 1, 2013, each municipal
34 police department and the Department of Emergency Services and
35 Public Protection shall adopt procedures for the conducting of photo
36 lineups and live lineups that are in accordance with the policies and
37 guidelines developed and promulgated by the Police Officer Standards
38 and Training Council and the Division of State Police within the
39 Department of Emergency Services and Public Protection pursuant to
40 subsection (b) of this section and that comply with the following
41 requirements:

42 [(1) When practicable, the person conducting the identification
43 procedure shall be a person who is not aware of which person in the
44 photo lineup or live lineup is suspected as the perpetrator of the
45 offense;]

46 (1) Whenever a specific person is suspected as the perpetrator of an
47 offense, the photographs included in a photo lineup or the persons
48 participating in a live lineup shall be presented sequentially so that the
49 eyewitness views one photograph or one person at a time in
50 accordance with the policies and guidelines developed and
51 promulgated by the Police Officer Standards and Training Council and
52 the Division of State Police within the Department of Emergency
53 Services and Public Protection pursuant to subsection (b) of this
54 section;

55 (2) The identification procedure shall be conducted in such a
56 manner that the person conducting the procedure does not know
57 which person in the photo lineup or live lineup is suspected as the
58 perpetrator of the offense, except that, if it is not practicable to conduct
59 a photo lineup in such a manner, the photo lineup shall be conducted
60 by the use of a folder shuffle method, computer program or other
61 comparable method so that the person conducting the procedure does
62 not know which photograph the eyewitness is viewing during the
63 procedure;

64 [(2)] (3) The eyewitness shall be instructed prior to the identification
65 procedure:

66 (A) That the eyewitness will be asked to view an array of
67 photographs or a group of persons, and that each photograph or
68 person will be presented one at a time;

69 (B) That it is as important to exclude innocent persons as it is to
70 identify the perpetrator;

71 (C) That the persons in a photo lineup or live lineup may not look
72 exactly as they did on the date of the offense because features like
73 facial or head hair can change;

74 [(A)] (D) That the perpetrator may or may not be among the persons
75 in the photo lineup or [the] live lineup;

76 [(B)] (E) That the eyewitness should not feel compelled to make an
77 identification; [and]

78 [(C)] (F) That the eyewitness should take as much time as needed in
79 making a decision; and

80 (G) That the police will continue to investigate the offense
81 regardless of whether the eyewitness makes an identification;

82 (4) In addition to the instructions required by subdivision (3) of this
83 subsection, the eyewitness shall be given such instructions as may be
84 developed and promulgated by the Police Officer Standards and
85 Training Council and the Division of State Police within the
86 Department of Emergency Services and Public Protection pursuant to
87 subsection (b) of this section;

88 [(3)] (5) The photo lineup or live lineup shall be composed so that
89 the fillers generally fit the description of the person suspected as the
90 perpetrator and, in the case of a photo lineup, so that the photograph
91 of the person suspected as the perpetrator resembles his or her
92 appearance at the time of the offense and does not unduly stand out;

93 [(4)] (6) If the eyewitness has previously viewed a photo lineup or
94 live lineup in connection with the identification of another person
95 suspected of involvement in the offense, the fillers in the lineup in
96 which the person suspected as the perpetrator participates or in which
97 the photograph of the person suspected as the perpetrator is included
98 shall be different from the fillers used in any prior lineups;

99 [(5)] (7) At least five fillers shall be included in the photo lineup and
100 at least four fillers shall be included in the live lineup, in addition to
101 the person suspected as the perpetrator;

102 [(6)] (8) In a photo lineup, no writings or information concerning
103 any previous arrest of the person suspected as the perpetrator shall be
104 visible to the eyewitness;

105 [(7)] (9) In a live lineup, any identification actions, such as speaking

106 or making gestures or other movements, shall be performed by all
107 lineup participants;

108 [(8)] (10) In a live lineup, all lineup participants shall be out of the
109 view of the eyewitness at the beginning of the identification procedure;

110 [(9)] (11) The person suspected as the perpetrator shall be the only
111 suspected perpetrator included in the identification procedure;

112 [(10)] (12) Nothing shall be said to the eyewitness regarding the
113 position in the photo lineup or the live lineup of the person suspected
114 as the perpetrator;

115 [(11)] (13) Nothing shall be said to the eyewitness that might
116 influence the eyewitness's selection of the person suspected as the
117 perpetrator;

118 [(12)] (14) If the eyewitness identifies a person as the perpetrator,
119 the eyewitness shall not be provided any information concerning such
120 person prior to obtaining the eyewitness's statement [that he or she is
121 certain] regarding how certain he or she is of the selection; and

122 [(13)] (15) A written record of the identification procedure shall be
123 made that includes the following information:

124 (A) All identification and nonidentification results obtained during
125 the identification procedure, signed by the eyewitness, including the
126 eyewitness's own words regarding how certain he or she is of the
127 selection;

128 (B) The names of all persons present at the identification procedure;

129 (C) The date and time of the identification procedure;

130 (D) In a photo lineup, the photographs [themselves] presented to
131 the eyewitness or copies thereof;

132 (E) In a photo lineup, identification information on all persons

133 whose photograph was included in the lineup and the sources of all
134 photographs used; and

135 (F) In a live lineup, identification information on all persons who
136 participated in the lineup.

137 Sec. 2. (NEW) (*Effective October 1, 2012*) Each police basic or review
138 training program conducted or administered by the Police Officer
139 Standards and Training Council, the Division of State Police within the
140 Department of Emergency Services and Public Protection or a
141 municipal police department shall provide training to police officers in
142 the administration of eyewitness identification procedures in
143 accordance with the policies and guidelines developed and
144 promulgated by the Police Officer Standards and Training Council and
145 the Division of State Police within the Department of Emergency
146 Services and Public Protection pursuant to subsection (b) of section 54-
147 1p of the general statutes, as amended by this act.

148 Sec. 3. Section 2 of public act 11-252 is repealed and the following is
149 substituted in lieu thereof (*Effective from passage*):

150 (a) There is established an Eyewitness Identification Task Force to
151 study issues concerning eyewitness identification in criminal
152 investigations and the use of sequential live and photo lineups. The
153 task force shall examine: (1) The science of sequential methods of
154 conducting a live lineup and a photo lineup, (2) the use of sequential
155 lineups in other states, (3) the practical implications of a state law
156 mandating sequential lineups, and (4) such other topics as the task
157 force deems appropriate relating to eyewitness identification and the
158 provision of sequential lineups.

159 (b) The task force shall consist of the following members or their
160 designees: The chairpersons and ranking members of the joint
161 standing committee of the General Assembly on the judiciary; the
162 Chief State's Attorney; the Chief Public Defender; the Victim Advocate;
163 an active or retired judge appointed by the Chief Justice of the
164 Supreme Court; a municipal police chief appointed by the president of

165 the Connecticut Police Chiefs Association; a representative of the
166 Police Officer Standards and Training Council; a representative of the
167 State Police Training School appointed by the Commissioner of [Public
168 Safety] Emergency Services and Public Protection; a representative of
169 the criminal defense bar appointed by the president of the Connecticut
170 Criminal Defense Lawyers Association; a representative from the
171 Connecticut Innocence Project; and six public members, including the
172 dean of a law school located in this state and a social scientist,
173 appointed one each by the president pro tempore of the Senate, the
174 speaker of the House of Representatives, the majority leader of the
175 Senate, the majority leader of the House of Representatives, the
176 minority leader of the Senate, and the minority leader of the House of
177 Representatives.

178 (c) The task force may solicit and accept gifts, donations, grants or
179 funds from any public or private source to assist the task force in
180 carrying out its duties.

181 (d) The task force shall report its findings and recommendations to
182 the joint standing committee of the General Assembly on the judiciary
183 in accordance with section 11-4a of the general statutes not later than
184 April 1, 2012.

185 (e) After submitting the report required under subsection (d) of this
186 section, the task force shall continue in existence for the purpose of (1)
187 assisting the Police Officer Standards and Training Council and the
188 Division of State Police within the Department of Emergency Services
189 and Public Protection in the development of policies and guidelines for
190 the conducting of eyewitness identification procedures by law
191 enforcement agencies as required by subsection (b) of section 54-1p of
192 the general statutes, as amended by this act, (2) researching and
193 evaluating best practices in the conducting of eyewitness identification
194 procedures as such practices may change from time to time, and
195 recommending such revised best practices to the Police Officer
196 Standards and Training Council and the Division of State Police within
197 the Department of Emergency Services and Public Protection, (3)

198 collecting statistics concerning the conducting of eyewitness
199 identification procedures by law enforcement agencies, and (4)
200 monitoring the implementation of section 54-1p of the general statutes,
201 as amended by this act. The task force shall report the results of such
202 monitoring, including any recommendations for proposed legislation,
203 to the joint standing committee of the General Assembly on the
204 judiciary in accordance with section 11-4a of the general statutes not
205 later than February 5, 2014.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2012</i>	54-1p
Sec. 2	<i>October 1, 2012</i>	New section
Sec. 3	<i>from passage</i>	PA 11-252, Sec. 2

Section 1	<i>July 1, 2012</i>	54-1p
Sec. 2	<i>October 1, 2012</i>	New section
Sec. 3	<i>from passage</i>	PA 11-252, Sec. 2

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

There is no fiscal impact associated with creating standards for the eyewitness identification process.

House Amendment "A" broadened the discretion of local police agencies to adopt standards that meet the minimum criteria set forth by the Police Officers Standards and Training Council and has no fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis (as amended by House "A")***sHB 5501****AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES.****SUMMARY:**

This bill refines police techniques for conducting eyewitness identifications of both photographic and live lineups. It includes provisions on:

1. development, promulgation, and training functions performed jointly by the Police Officer Standards Council (POST) and the Division of State Police (DSP) in the Department of Emergency Services and Public Protection (DESPP);
2. police instructions and communications with eyewitnesses; and
3. new functions for the Eyewitness Identification Task Force.

The bill also makes minor changes.

*House Amendment "A" specifies that the eyewitness identification policies that law enforcement agencies must adopt must be in accordance with POST's and DSP's joint policies and guidelines.

EFFECTIVE DATE: Upon passage for the task force; July 1, 2012, for changes in the eyewitness identification procedures; and October 1, 2012, for the police officer training.

POST AND DSP POLICIES

The bill requires, by February 1, 2013, that POST and DSP jointly develop and promulgate uniform, mandatory policies and appropriate guidelines for conducting eyewitness identifications. They must be (1)

based on best practices and (2) followed by all municipal and state law enforcement agencies. POST and DSP must also develop and distribute a standard form for use in conducting, and making a written record of, eyewitness identification proceedings.

The bill also requires basic and review POST, DSP, and municipal police training programs to include segments on administering the eyewitness identification procedures POST and DSP develop.

Applicability to Police and DESPP Procedures

The law requires each municipal police department and DESPP to adopt their own procedures for conducting photo and live lineups. Current law requires them to be adopted by January 1, 2012, but the bill extends the deadline to May 1, 2013. It specifies that DESPP's and departmental procedures must be in accordance with POST's and DSP's policies and guidelines.

IDENTITY OF SUSPECT

Currently, municipal and DESPP photo and live lineup procedures require that, when possible, the person conducting the lineup not be aware of which person is the suspect. The bill states that where this is not possible in a photo lineup, the person administering it use a "shuffle" method (similar to shuffling a deck of cards), computer program, or comparable method so that the person conducting the procedure does not know which photo the eyewitness is viewing.

Sequential Viewing

The bill also requires that whenever a suspect is among those participating in a photo or live lineup, each participant be presented sequentially so that the eyewitness views only one photograph or one person at a time. POST and SPD's joint policies and guidelines must require sequential viewing.

INSTRUCTIONS TO EYEWITNESSES

The bill increases the information that police officers must give to eyewitnesses before they view a photo or live lineup.

Existing law requires they be told that they should (1) not feel compelled to make an identification and (2) take as much time as they need in making a decision.

The bill requires that they also be told that:

1. they will be asked to view an array of photographs or a group of people, and that each photograph or person will be presented one at a time;
2. it is as important to exclude innocent persons as it is to identify the perpetrator;
3. the person in a lineup may not look exactly as he or she did on the date of the offense because features like facial and head hair can change;
4. the perpetrator may or may not (current law says only “may”) be among the people in the lineup; and
5. the police will continue to investigate the crime regardless of whether the eyewitness makes an identification.

The bill also instructs police personnel to give any other instructions developed by POST and DSP.

Information About the Perpetrator

When an eyewitness identifies the suspected perpetrator after a photo or live lineup, current law prohibits police officers from telling the eyewitness anything about him or her until obtaining a statement from the witness indicating that he or she is certain the identification is correct.

The bill permits officers to give out information after the witness provides a statement indicating how certain he or she is that the identification is correct.

EYEWITNESS IDENTIFICATION TASKFORCE

The bill assigns new functions to the 19-member Eyewitness Identification Task Force created by PA 11-252. The task force is currently assigned to study issues relating to eyewitness identification and the use of sequential photo and live lineups in criminal investigations. The task force submitted its findings and recommendations to the Judiciary Committee on February 8, 2012.

New Functions

Under the bill, it will be responsible for:

4. assisting POST and DSP develop their eyewitness identification policies and guidelines,
5. researching and evaluating best practices concerning the conduct of eyewitness identification proceedings and making recommendations to POST and DSP when such practices are revised,
6. collecting statistics concerning the conduct of eyewitness procedures by law enforcement agencies, and
7. monitoring the implementation of the eyewitness identification.

The task force must report to the Judiciary Committee on the results of its monitoring, and recommendations for proposed legislation, by February 5, 2014.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 1 (03/21/2012)

Public Safety and Security Committee

Joint Favorable

Yea 22 Nay 0 (04/25/2012)